terminated forever upon his release November 2, 1937, and that the power of the United States Board of Parole over him expired on said date; and that its warrant for his retaking was thereby null and void and of no force and effect; and that his detention was in violation of the due process clause of the Fifth Amendment. Said writ was dismissed on July 1, 1943 by the United States District Court (R. 18).

6. Your petitioner appealed to the United States Circuit Court of Appeals for the Sixth Circuit and the appeal was heard on February 21, 1944 and on the 27th day of March, A. D. 1944 said appellate court handed down an opinion affirming the judgment of the District Court for the Eastern District of Michigan, Southern Division.

OPINION BELOW

The opinion of the Circuit Court of Appeals is not yet officially reported (R. 30).

JURISDICTIONAL STATEMENT

(a) Constitutional Provision, Statutes and Rules Involved.

Your petitioner is advised and believes that the said judgment of the United States Circuit Court of Appeals for the Sixth Circuit is erroneous, and that this Honorable Court should require the said case to be certified to it for review and determination in conformity with the provisions of Title 28 U. S. C. Section 347 (a) and Section 463 (a) and (c) of Title 28 U. S. C. which allows the filing of a petition for certiorari in *habeas corpus* cases; and also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court on May 7, 1934.

The Fifth Amendment in pertinent part provides as follows: "No person shall * * * deprived of life, liberty, or property, without due process of law * * *."

The federal statutes involved are Sections 710, 710 a and 744h of Title 18, U. S. C., the pertinent parts of which set forth as follows, respectively:

> "§710 Deductions from sentences for good conduct; computation. Each prisoner who has been or shall hereafter be convicted of any offense against the laws of the United States, and is confined, in execution of the judgment or sentence upon any such conviction, in any United States penitentiary or jail, or in any penitentiary, prison, or jail of any State or Territory, for a definite term, other than for life, whose record of conduct shows that he has faithfully observed all rules and has not been subjected to punishment, shall be entitled to a deduction from the term of his sentence to be estimated as follows, commencing on the first day of his arrival at the penitentiary, prison, or jail: Upon a sentence of not less than six months nor more than one year, five days for each month; upon a sentence of more than one year and less than three years, six days for each month; upon a sentence of not less than three years and less than five years, seven days for each month; upon a sentence of not less than five years and less than ten years, eight days for each month; upon a sentence of ten years or more, ten days for each month. When a prisoner has two or more sentences, the aggregate of his several sentences shall be the basis upon which his deduction shall be estimated. (June 21, 1902, c. 1140 § 1, 32 Stat. 397.)"
>
> "§ 710a. SAME: PRISONERS SENTENCED ON OR AFTER JULY 29, 1932. With respect to Federal prisoners sentenced on and after July 29, 1932, deductions from the term of sentence for good conduct, as provided for by section 710 of this title, shall be computed beginning with the day on which the sentence commences to run. (June 29, 1932, c. 310 § 2, 47 Stat. 381.)

"§ 744h. SAME: COMMUTATION OF SENTENCE FOR GOOD CONDUCT. Sections 710 to 712, inclusive, of this title, providing for commutation of sentences of United States prisoners for good conduct, shall be applicable to prisoners engaged in any industry, or transferred to any camp established under authority of section 744b and 744c of this title; and in addition thereto each prisoner, without regard to length of sentence, may, in the discretion of the Attorney General, be allowed, under the same terms and conditions as provided in sections 710 to 712, inclusive, a deduction from his sentence of not to exceed three days for each month of actual employment in said industry or said camp for the first year or any part thereof, and for any succeeding year or any part thereof not to exceed five days for each month of actual employment in said industry or said camp. (May 27, 1930, c. 340, § 8, 46 Stat. 392,)"

and also Section 714, Title 18, U. S. C., as follows:

"§ 714. PAROLE OF PRISONERS: CONDITIONS. Every prisoner who has been or may hereafter be convicted of any offense against the United States and is confined in execution of the judgment of such conviction in any United States Penitentiary, or prison, for a definite term of over one year, or for the term of his natural life, whose record of conduct shows that he has observed the rules of such institution, and who, if sentenced for a definite term, has served one-third of the total of such term or terms for which he was sentenced, or, if sentenced for the term of his natural life, has served not less than fifteen years, may be released on parole as hereinafter provided. (June 25, 1910, c. 387, § 1, 36 Stat. 819; Jan. 23, 1913. c. 9, 37 Stat. 650.)";

and also the pertinent part of Section 716, Title 18, U. S. C., as follows:

> "§ 716. SAME: GRANTING OF PAROLE: APPLICATION; FINDINGS; TERMS AND CONDITIONS; APPROVAL OF ATTORNEY GENERAL; PAROLE OF ALIEN PRISONERS.
>
> If it shall appear to the Board of Parole from a report from the proper officers of such prison or upon application by a prisoner for release on parole, that there is a reasonable probability that such applicant will live and remain at liberty without violating the laws, and if in the opinion of the board such release is not incompatible with the welfare of society, then the Board of Parole may in its discretion authorize the release of such applicant on parole, and he shall be allowed to go on parole outside of said prison, and, in the discretion of the board, to return to his home, upon such terms, and conditions, including personal reports from such paroled person, as said Board of Parole shall prescribe, and to remain, while on parole, in the legal custody and under the control of the warden of such prison from which paroled, and until the expiration of the term or terms specified in his sentence, less such good time allowance as is or may hereafter be provided for by law * * *." (June 25, 1910, c. 387, § 3, 36 Stat. 819; May 13, 1930, c. 255, § 1, 46 Stat. 272; Mar. 2, 1931, c. 371, 46 Stat. 1469.)"

and 716a, Title 18 U. S. C., as follows:

> "§ 716a. SAME: CONTINUANCE OF PAROLE UNTIL EXPIRATION OF MAXIMUM SENTENCE WITHOUT DEDUCTIONS. Any prisoner sentenced after June 29, 1932, who may be paroled under authority of the parole laws, shall continue on parole until the expiration of the maximum term or terms specified in his sentence without deduction of such allowance for good conduct as is or may hereafter be provided for by law. (June 29, 1932, c. 310, § 3, 47 Stat. 381.)"

and also 716b, Title 18 U. S. C., as follows:

> "§ 716b. SAME: PRISONERS RELEASED WITH CREDIT FOR GOOD CONDUCT treated as on parole until expiration of maximum term. Any prisoner who shall have served the term or terms for which he shall after June 29, 1932, be sentenced, less deductions allowed therefrom for good conduct, shall upon release be treated as if released on parole, and shall be subject to all provisions of law relating to the parole of United States prisoners until the expiration of the maximum term or terms specified in his sentence: PROVIDED, That this section shall not operate to present delivery of a prisoner to the authorities of any State otherwise entitled to his custody. (June 29, 1932, c. 310, § 4, 47 Stat. 381.)"

and also 723, Title 18, U. S. C., as follows:

> "§ 723. SAME: POWER OF PRESIDENT TO GRANT PARDON OR COMMUTATION, OR GOOD TIME ALLOWANCE NOT IMPAIRED. Nothing in sections 714 to 722 of this title shall be construed to impair the power of the President of the United States to grant a pardon or commutation in any case, or in any way impair or revoke such good time allowance as is or may hereafter be provided by law. (June 25, 1910, c. 387, § 10, 36 Stat. 821.)"

(b) Statement Particularly Disclosing Jurisdiction

The power of the United States Board of Parole, an agency of the United States, is directly involved in this petition. Without positive enactment by the Congress and, therefore, beyond its power to act legally, the Parole Board seeks to deprive petitioner of his liberty without due process of law. Petitioner was released on the so-called conditional release (R. 10).

Petitioner did not make a parole under Section 714, Title 18, *supra,* so that he does not fall within Sections 716, 716a, and 716b, Title 18, inasmuch as petitioner was released under Section 710, Title 18, *supra,* and the Parole Board has no authority or power to retake him, and its Parole Violation Warrant is null and void against his just rights and should be so declared (R. 22). Petitioner was not on parole; a conditional release is a device evolved by the Parole Board nowhere authorized by any Act of Congress, so that the Supreme Court has squarely before it the question of construction of the foregoing federal statutes to determine whether or not the Parole Board has the power to act as it seeks to act in this case and thereby recall petitioner to the penitentiary.

Petitioner respectfully submits that the appellate court has erroneously decided an important question of federal law which has not been but should be settled by this court in accordance with 5 (b) of Rule 38 of the Supreme Court Rules. Petitioner respectfully submits that the decision of this court in *Zerbst v. Kidwell,* 304 U. S. 359, 82 L. Ed. 1399, 58 S. Ct. 872, 116 A. L. R. 808, is not controlling herein and that footnote number 1 in said decision does not make the law in this case, and that the precise point presented herein has never been decided by this honorable court; and that to deprive petitioner of his liberty under an erroneous decision of the appellate court would be an act against the just rights of the petitioner and contrary to the due process clause of the 5th Amendment, *supra.*

QUESTION PRESENTED

Does petitioner fall within the provisions of Section 716a and 716b, Title 18, U. S. C., when not paroled under Sections 714 and 716, Title 18, U. S. C., so as to grant the Parole Board power to retake him without violating the due process clause of the Fifth Amendment, when petitioner is actually released under the authority of Sections 710 and 744h, Title 18, U. S. C., *supra.*

SPECIFICATION OF ERROR TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the petitioner having been released under the provisions of Sections 710 and 744h, Title 18 U. S. C., is under the provisions of Sections 716a and 716b, Title 18, U. S. C., and consequently invalidating the plain meaning of Sections 710 and 744h in violation of the due process clause of the Fifth Amendment.

REASONS FOR GRANTING THE WRIT

The decision of the Circuit Court of Appeals erroneously assumes that the petitioner received a parole by virtue of Sections 714 and 716 U. S. C., Title 18, whereby he would have been released after serving one-third of the term of his sentence, and thereby petitioner would admittedly have been under the provisions of Sections 716a and 716b of Title 18, U. S. C. However, as a matter of fact, petitioner was released under and by virtue of the terms of Sections 710 and 710a and 744h, Title 18, U. S. C., and thereby does not come within the provisions of 716a and 716b, as petitioner was not released on parole. His sentence expired forever on November 2, 1937 and not on November 8, 1939, as the Parole Board erroneously contends.

The precise question presented herein has not been decided by this honorable court. With all due respect to *Zerbst v. Kidwell,* 92 Fed. (2d) 756 (C. C. A. 5), affirmed 304 U. S. 359, 82 L. Ed. 1399, 58 S. Ct. 872, 116 A. L. R. 808, *Story v. Rives,* 97 Fed. (2d) 182 (C. A. D. C.), cert. denied 305 U. S. 595, *King v. U. S.,* 98 Fed. (2d) 291 (C. A. D. C.), *Briggs v. Huff,* 118 Fed. (2d) 1006 (C. C. A. 4), and *United States ex rel Michelson v. Dillard,* 102 Fed. (2d) 94 (C. C. A. 4), the exact question presented herein was not the main question in the above cases.

The United States has not changed or amended Section 710, Title 18 U. S. C., enacted June 21, 1902, and that the United States had no intention so to do is clearly indicated by the enactment of Section 710a of Title 18, U. S. C., which reaffirms the absolute deduction from the term of the sentence proposition advanced herein, and which was enacted June 29, 1932, on the same day of the enactment of Sections 716a and 716b, Title 18 U. S. C., so that it can scarcely be argued that the Congress thereby intended to change the meaning of Section 710 of Title 18 U. S. C., when it did not so do.

It is apparent from the large number of cases decided upon this subject in the circuit courts of appeal that there is not unanimity of decision therein, that the question is a serious one that needs decision and clarification by this honorable court, that the circuit courts of appeal are not in accord thereon, and that the Circuit Court of Appeals for the Sixth Circuit erred in its decision in this case. As to conflict of decisions see *Clark v. Suprenant* (C. C. A. 9), 94 Fed. (2d) 969 and *Douglas v. King* (C. C. A. 8), 110 Fed. (2d) 911 in favor of petitioner, and *King v. United States,* 98 Fed. (2d) 291 (C. A. D. C.) and *Briggs v. Huff,* 118 Fed. (2d) 1006 (C. C. A. 4) against the theory of petitioner herein. Therefore, there is a conflict of decision

upon a very important question of federal law which should be decided by this honorable court.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be granted.

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